

APPENDIX E TO DIR CONTRACT NO. DIR-SDD-1647

GRM SERVICE AGREEMENT

THIS AGREEMENT for information technology products and services (hereafter the “Agreement”) is entered into this ____ day of _____, _____ (hereafter the “Effective Date”) by and between _____, a governmental entity (hereafter referred to as the “Customer”), and ACS STATE & LOCAL SOLUTIONS, INC., a New York corporation, with its principal place of business located at 8260 Willow Oaks Corporate Drive, Fairfax, VA 22031 (hereafter “ACS”), referred to individually as Party and collectively as Parties.

WHEREAS, ACS entered into Contract No. DIR-SDD-1647 with the State of Texas, Department of Information Resources and is eligible to provide services to DIR Customers, including Customers hereunder; and

WHEREAS, the Customer and ACS now wish to enter into an Agreement to deliver the proposed software and related services in accordance with the terms of DIR Contract No. DIR-SDD-1647 the ACS Proposal dated _____.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises and covenants herein the Parties hereto agree as follows:

1.0 Products and Services

- 1.1 Work Requirements:** In consideration for the payments described in Section 2.0 hereof, and the License Agreement, unless sooner terminated, ACS will provide Customer with the products and services described in the statement of work and schedule annexed hereto as Exhibit “A”.
- 1.2 Application System Software:** ACS shall deliver to Customer a software license for all ACS-owned application system software modules described in Exhibit “A” (hereafter the “Application System Software” or “System”), in accordance with the terms of the ACS Software License Agreement, Appendix D to DIR Contract No. DIR-SDD-1647, (“License Agreement”), which shall be executed by Customer simultaneously with this Agreement.
- 1.3 Third-Party Software:** Exhibit “A” fully sets out the third-party software components associated with this Agreement. Rights to commercial-off-the-shelf software products provided by third-party software vendors may be subject to licensing provisions of those third-party software vendors, which licenses the Customer hereby accepts.

2.0 Compensation and Payment Provisions

The Customer shall make payments to ACS for the products and services in the amount set forth in the payment schedule attached hereto as Exhibit "B". All pricing shall be consistent with DIR Contract No. DIR-SDD-1647. All payments shall be made in accordance with Section 7.C. of Appendix A to DIR Contract No. DIR-SDD-1647.

3.0 Term

The initial term of this Agreement will begin on the Effective Date and will end on _____. The Agreement may be extended for up to _____ additional renewal terms of 1 (one) year upon written notice from ACS to Customer of such intent at least thirty (30) days prior to the expiration of the then current term and Customer's concurrence, subject to terms and conditions that are agreeable to both Customer and ACS and are within the scope of DIR Contract No. DIR-SDD-1647.

4.0 Warranty

4.1 Limited Application System Software Warranty

ACS warrants that the Application System Software furnished by ACS pursuant to this Agreement will be free from material errors that would prevent the substantial operational features of the System from functioning when used properly under normal conditions. This warranty is valid for a period of ninety (90) days from the date of System installation. This Application System Software warranty shall not cover, and shall be void as to, any hardware or commercial off-the-shelf software components. In addition, the Application System Software warranty shall not cover: 1) any components for which maintenance has been performed by a third party not authorized by ACS; 2) any components that have been damaged through the negligence or misconduct of parties other than ACS or its employees or agents; 3) any components which have been damaged as a result of Customer's failure to operate them in accordance with the ACS's operating instructions; or 4) failures due to force majeure, or exposure to unusual physical or electrical stress.

In the event that any Application System Software provided under this Agreement is found to be defective, Customer shall provide prompt written notice to ACS identifying such defect or defects with specificity. ACS will be provided a reasonable opportunity to investigate the matter, and to verify the existence of such defect(s). Upon ACS's verification of the claimed defect(s), Customer shall be entitled to any of the following remedies, as determined by ACS in its discretion: a) repair, b) replacement, c) other correction of the defective item at ACS's expense, or d) an equitable adjustment in the contract price. The Parties intend that

any of the foregoing remedies shall constitute a complete and satisfactory remedy in the event of a covered defect, and that such remedies shall constitute the sole and exclusive remedies available to Customer for breach of ACS's Application System Software warranty.

THE LIMITED WARRANTY SET FORTH IN THIS SECTION IS MADE TO CUSTOMER EXCLUSIVELY AND IS IN LIEU OF ALL OTHER WARRANTIES. ACS MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE APPLICATION SYSTEM SOFTWARE OR THE SERVICES PROVIDED HEREUNDER, IN WHOLE OR IN PART. ACS EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ACS EXPRESSLY DOES NOT WARRANT THAT THE APPLICATION SYSTEM SOFTWARE, IN WHOLE OR IN PART, WILL BE ERROR FREE, OR WILL OPERATE WITHOUT INTERRUPTION. CUSTOMER WAIVES ANY CLAIM THAT THE LIMITED APPLICATION SYSTEM SOFTWARE WARRANTY SET FORTH IN THIS SECTION OR THE REMEDY FOR BREACH OF SUCH WARRANTY FAILS OF ITS ESSENTIAL PURPOSE.

4.2 Limited Warranty on Commercial off-the-Shelf Software

To the maximum extent allowable by third-party commercial off-the-shelf vendors, ACS shall pass-through to the Customer all manufacturers' warranties provided by third-party commercial off-the-shelf software vendors for materials furnished under this Agreement. ACS shall provide all standard manufacturers' warranties, guarantees, and/or exchange policies for defective items, which are offered through the manufacturers themselves. ACS makes no other warranties whatsoever, express or implied, with regard to the commercial off-the-shelf software, in whole or in part. ACS explicitly disclaims all warranties of merchantability and fitness for a particular purpose.

4.3 Data Backup: Customer will be responsible for backing up all software and data contained in the System on a regular basis, and prior to ACS providing warranty or maintenance services under this Agreement. Under no circumstances will ACS be responsible for the loss of data or software.

5.0 Indemnification by Contactor shall be in accordance with Section 9.A. of Appendix A to DIR Contract No. DIR-SDD-1647.

6.0 Limitation of Liability

6.1 Limitation of Liability shall be in accordance with Section 9.K. of Appendix A to DIR Contract No. DIR-SDD-1647.

6.2 Basis of the Bargain

THE CUSTOMER ACKNOWLEDGES THAT ACS HAS SET ITS PRICING AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTY AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

7.0 Insurance

Insurance coverage shall be in accordance with Section 9.N. of Appendix A to DIR Contract No. DIR-SDD-1647.

8.0 Force Majeure

Force Majeure shall be in accordance with Section 10.C. of Appendix A to DIR Contract No. DIR-SDD-1647.

9.0 Ownership of Data and Software

Customer will retain all title, rights, and ownership of all data, including associated indexes, film, and other data created and/or acquired by use of the System. Customer may duplicate the data entered into the System on magnetic media. Customer will retain ownership of all data created by the use of the System as stored on magnetic tape, magnetic disk, CD-ROM disk (or other "like" electronic media that may be used). ACS retains all rights to its software, and Customer may only use such software pursuant to ACS' License Agreement. ACS does not have any obligation to convert or transfer any data to any other format, to allow use of its software other than as set forth in the Statement of Work (Exhibit "A"), or as required pursuant to the License Agreement.

10.0 Confidential Information

The Parties acknowledge that in the course of performing their responsibilities under this Agreement, they may be exposed to or acquire information which is proprietary and confidential to the other Party or its affiliated companies or their agents. Any and all information of one Party in any form obtained by the other Party or its employees, agents or representatives in the course of performing this Agreement shall be deemed to be proprietary and confidential information of such Party. To the extent consistent with the Texas Public Information Act, the Parties agree to hold such information in strict confidence and not to copy, reproduce, sell,

assign, license, market, transfer, give or otherwise disclose such information to third-parties or to use such information for any purposes whatsoever, without the express written permission of the other Party, other than for the provision of services hereunder, and to advise each of their employees, agents and representatives of their obligations to keep such information confidential. All such confidential and proprietary information described herein and any deliverable provided hereunder, in whatever form, are hereafter collectively referred to as "Confidential Information." The Parties shall use their reasonable efforts to assist each other in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, the Parties shall use reasonable efforts to advise each other immediately in the event that either learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement.

Notwithstanding the obligations set forth in the previous paragraph, the confidentiality obligations of the Parties shall not extend to information that:

- (a) is, at the time of its disclosure, or thereafter becomes part of the public domain through a source other than the receiving Party;
- (b) was known to the receiving Party as of the time of its disclosure;
- (c) is independently developed by the receiving Party;
- (d) is subsequently learned from a third party not under a confidentiality obligation to the providing Party;
- (e) is required to be disclosed pursuant to court order or other governmental authority, whereupon the receiving Party shall provide notice to the disclosing Party so as to allow the disclosing Party to take appropriate steps to protect its interests; or
- (f) is required to be disclosed by the Texas Public Information Act.

11.0 Termination

Termination shall be in accordance with Section 10.B. of Appendix A to DIR Contract No. DIR-SDD-1647.

12.0 Miscellaneous

12.1 Governing Law and Venue: All questions concerning the validity, interpretation and performance of this Agreement will be governed by and decided in accordance with the laws of the State of Texas. All Disputes will be resolved in accordance with Section 10.A. of Appendix A to DIR Contract No. DIR-SDD-1647. The Parties hereby submit and

consent to the exclusive jurisdiction of any state court located in Travis County, Texas. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

- 12.2 Equitable Remedies:** To the extent authorized by Texas law and Constitution, the Parties agree that in the event of any breach or threatened breach of any provision of this Agreement concerning (i) Confidential Information, (ii) intellectual property rights or (iii) other matters for which equitable rights may be granted, money damages would be an inadequate remedy. Accordingly, such provisions may be enforced by the preliminary or permanent, mandatory or prohibitory injunction or other order of a court of competent jurisdiction.
- 12.3 Integration:** DIR Contract No. DIR-SDD-1647, this Agreement and the attached exhibits and the related License Agreement constitute the entire agreement between the Parties with respect to the subject matter described herein. No agreements, representations, or warranties other than those specifically included in this Agreement and the attached exhibits shall be binding on either of the Parties. In case of a conflict between the terms of DIR Contract No. DIR-SDD-1647, this Agreement and any attached exhibit, the terms of DIR Contract No. DIR-SDD-1647, then this Agreement, and then any attached exhibit shall prevail.
- 12.4 Notices:** Notices shall be in accordance with Section 11.A. of Appendix A to DIR Contract No. DIR-SDD-1647.
- 12.5 Assignment:** Assignment shall be in accordance with Section 4.D. of Appendix A to DIR Contract No. DIR-SDD-1647..
- 12.6 Modification:** This Agreement can be modified by written documentation signed by both Parties.
- 12.7 Waiver:** A waiver of any part of this Agreement shall not be a waiver of the entire Agreement.
- 12.8 Taxes:** As per Section 151.309, Texas Tax Code, governmental Customers under this Agreement are exempt from the assessment of

State sales, use and excise taxes. Further, governmental Customers are exempt from Federal Excise Taxes, 26 United States Code 4253 (i) and (ii).

12.9 Independent Contractor Status: Contractor is, and shall remain at all times, an independent contractor with respect to activities and conduct while engaged in the performance of the services for Customer under this Agreement. At no time during the performance of this Agreement, or within one year from any termination or the contract expiration, shall the Customer solicit and hire any of ACS's employees. Nothing herein shall operate to preclude a party from advertising employment opportunities to the general public and entertain candidates there from.

12.10 Attachments: Attached to and made part of the Agreement are the following:

EXHIBIT "A" Statement of Work

EXHIBIT "B" Compensation and Payment Provisions

12.11 Further Documentation: The Parties agree to promptly execute such other and further documents and agreements (including the License Agreement) as may be reasonably necessary or advisable to effectuate the terms of this Agreement.

12.12 Survival: The terms of Sections 6 (Limitation of Liability), 9 (Ownership of Data and Software), and 10 (Confidential Information) hereof shall survive the expiration or termination of this Agreement for a period of seven (7) years.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

ACS STATE & LOCAL SOLUTIONS, INC.

CUSTOMER

By: _____

By: _____

Name: _____

Name: _____

Date: _____

Date: _____

EXHIBIT "A"

STATEMENT OF WORK

1.0 Services

1.1 Implementation Services

1.2 Deliverables

1.3 System Testing

ACS will deliver an acceptance test plan that addresses the testing to be conducted on this program. Test cases will be developed in support of the testing effort, and will be designed to replicate the actual conditions under which the System will be operated. Testing will be limited to the scope of use and coverage areas prescribed in the Technical Requirements set forth in Contractor's proposal. The Contractor and Customer shall coordinate their efforts, and shall cooperate to ensure that the testing program is completed in accordance with the test plan and schedule.

1.4 Acceptance

1.4.1 *Commercial Software:* All materials provided hereunder shall be inspected by Customer within five (5) calendar days of delivery at Customer's installation site(s). Inspection may include: (1) verification that quantities received match the quantities ordered; and (2) verification that the commercial software meets the minimum specifications set forth in the contract. Acceptance of commercial software will be assumed if Customer fails to notify Contractor of any discrepancy or defect within five calendar days of delivery, or beneficial use, whichever comes earlier.

1.4.2 *Application System Software:* Customer shall have ten (10) days to inspect all deliverables submitted by Contractor. Should any failures be identified during the inspection period, the Contractor will have a reasonable opportunity to correct any deficiencies to which such failures are attributable, after which a retest may be scheduled. This process will continue until all areas have passed, or it becomes obvious that the element of the System under testing will not meet the requirements of the Technical Requirements. At this point the Parties may negotiate an equitable adjustment of the contract price, or take such other steps as may be deemed appropriate. Signoff by the Customer program manager will signify the completion of each required test procedure. Such signoff shall

not be unreasonably delayed or withheld. It is understood and agreed that defects that do not prohibit the Application System Software from operating in substantial accordance with the vendor's published specifications shall not constitute grounds for non-acceptance hereunder, and may be corrected in subsequent releases of the licensed software offered by the vendors as part of ongoing warranty or maintenance of licensed software.

1.5 Training

1.6 Ongoing Maintenance Services

2.0 Products

2.1 Application System Software

2.2 Commercial Software

2.3 Rights to Software Updates

3.0 Implementation Schedule

The services described herein shall be performed, and Contractor shall deliver the software set forth in this Agreement, in accordance with the following implementation schedule; provided however, that any dates or times at which Contractor is required to make specified performance under this Agreement shall be automatically postponed, along with any liabilities associated therewith, to the extent that Contractor is prevented from meeting such dates or times by the Customer or by causes beyond Contractor's reasonable control; in which event any adverse impact on the implementation schedules beyond the delay itself, shall become the subject of an appropriate change order.

EXHIBIT “B”

**COMPENSATION AND PAYMENT PROVISIONS (CONSISTENT WITH
PRICING AND PAYMENT TERMS OF DIR CONTRACT NO. DIR-SDD-1647)**

